REMARKS

Reconsideration and withdrawal of the rejections of the application are requested in view of the amendments and remarks presented herein, which place the application into condition for allowance.

I. Status Of Claims And Formal Matters

Claims 69-74, 76-105, 145, 156, 162-181, and 193-202 are currently pending in the present application. Claims 69-73 were withdrawn from consideration and are canceled herein as are claims 69-74, 76-90, and 162-170. Claim 105 was amended to correct dependencies. Claims 91, 99, 145, and 156 were amended herein to add language indicating that each microsphere is covalently attached via its carboxylated surface to a substantially pure WNV NS5 protein. Support for the amendments can be found throughout the specification. For example, the specification teaches that antigens may be covalently attached to microspheres ([0175]), and more specifically that WNV NS5 may be covalently coupled to a microparticle ([0281] and [0284]). Further support for the covalent attachment to a microsphere via its carboxylated surface may be found for example at paragraphs [0317]. No new matter is added.

The Examiner is thanked for indicating that the claims would be allowable if they were amended to add language indicating that the microspheres are covalently attached via its carboxylated surface to a substantially pure WNV NS5 protein.

The Examiner has alleged that the current pending claims are not entitled to benefit of the priority date of October 31, 2002 of provisional application 60/422,755. The Office Action asserts that the present application claims a method of detecting WNV infection by testing for NS5 protein, and that the NS5 protein is not disclosed in 60/422,755. Applicants maintain the position that the priority date of the present claims should be **October 31, 2002**, not June 6, 2003.

The Examiner is thanked for withdrawing the rejections of claims under 35 U.S.C. § 112.

The Examiner is thanked for withdrawing the rejections of claims 91-105, 126-128, 145, 156, and 162-202 under 35 U.S.C. § 103.

It is submitted that the claims are patentably distinct over the prior art and that these claim are and were in full compliance with the requirements of 35 USC §112. The amendments of the claims herein are not made for the purpose of patentability within the meaning of 35 USC

§§ 101, 102, 103 or 112; but rather, the amendments are made simply for clarification and to round out the scope of protection to which Applicants are entitled. Furthermore, it is explicitly stated that the amendments should not give rise to any estoppel, as they are not narrowing amendments.

II. The Rejections Under 35 U.S.C. §103 Are Overcome

Claims 74 and 76-90 are rejected under 35 USC §103(a) as allegedly being obvious over Wang et al. ("Wang"), Valdes et al. ("Valdes"), Mandy et al ("Mandy"), Scaramozzino et al ("Scaramozzino"), and McDonell et al ("McDonell"). Claims 74 and 76-90 have been cancelled thereby obviating the rejection.

Accordingly, reconsideration and withdrawal of the rejection of claims 74 and 76-90 is respectfully requested.

III. Double Patenting Is Held In Abeyance

The Office Action provisionally rejects claims 74-105, 126-128, 145 and 156, and 162-202 under judicially created doctrine of double patenting over claims 1-9, 13-21, 24-35 and 56-57 of copending Application No. 10/839,442. Claims 74 and 76-90 have been cancelled thereby obviating the rejection in part.

The issue of whether there is indeed double patenting is contingent upon whether the remarks herewith are indeed considered and entered; and, if so, whether the Examiner believes there is overlap with claims ultimately allowed in the application.

Accordingly, reconsideration and withdrawal of the double patenting rejection, or at least holding it in abeyance until agreement is reached as to allowable subject matter, is respectfully requested.